

Internal Revenue Service

Number: **200709010**

Release Date: 3/2/2007

Index Number: 2642.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-121731-06

Date:

October 26, 2006

In re: Ruling request

LEGEND:

Taxpayer 1

Taxpayer 2

Date 1

Trust

Trustee

Year 1

Year 2

Year 3

Year 4

Year 5

Year 6

Year 7

Year 8

Year 9

Dear

This is in response to an amended request for relief by your authorized representative, submitted on your behalf, dated April 7, 2006, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations and section 2642(g) to make an election out of the automatic allocation of generation-skipping transfer (GST) tax under section 2632(c)(5)(A)(i)(II).

The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer 1 established Trust, an irrevocable trust, for the benefit of his descendants and other family members. Taxpayer 2 is the spouse of Taxpayer 1 and is not a beneficiary of Trust.

Pursuant to Section First, Subsection A of Trust, each beneficiary shall have the power to make a written demand to withdraw principal from Trust in an amount equal to such beneficiary's proportionate share of the value of any assets.

Section First, Subsection B provides that Trustee in his sole discretion may make payments from income or principal for the health, support, maintenance, and education of beneficiaries. Pursuant to such discretion, Trustee may distribute the entire principal.

Section Second, Subsection A, Paragraph 1 provides, in part, that following the death of the survivor of Taxpayer 1 and Taxpayer 2, the Trust principal shall be divided into shares representing Taxpayer 1's then living issue, per stirpes. Each share shall be held in a separate trust, the net income of which shall, in Trustee's discretion, either be accumulated in whole or in part, and added to principal, or paid to such descendant. Section Second, Subsection A, Paragraph 2 provides that Trustee in his sole discretion may make payments from principal for the health, support, maintenance, and education of such descendant.

Section Second, Subsection A, Paragraph 3 provides that upon such descendant's death, the remaining principal shall be distributed as follows: (a) To or in trust for one or more of Taxpayer 1's issue (other than such descendant) in such amounts as such descendant may appoint by will containing specific reference to this power of appointment, provided that such descendant may appoint all or any portion of the net income to his or her spouse for life or for any shorter period; or, to the extent that this power is not exercised, (b) to such descendant's then living issue, per stirpes; or in default of such issue, (c) to the then living issue, per stripes, of such descendant's nearest ancestor who was a descendant of Taxpayer 1 and who is survived by then living issue, or, in default thereof, (d) to Taxpayer's then living issue, per stirpes.

Section Second, Subsection B provides that all interest in the principal of each trust shall vest not later than twenty-one (21) years after the death of the survivor of certain lives in being on Date 1. Immediately before the expiration of such twenty-one year period, each such trust shall terminate and the remaining principal shall be distributed to Taxpayer 1's descendants then represented by such trust.

In each of the years from Year 1 through Year 5, Taxpayer 1 and Taxpayer 2 made transfers to Trust. On their Forms 709 filed for each of those years, they did not allocate any of their GST exemptions to transfers to Trust made in those years. In each of the years from Year 6 through Year 9, Taxpayer 1 and Taxpayer 2 made transfers to Trust. On their Forms 709 for Year 6 through Year 9, Taxpayer 1 and Taxpayer 2 consented to split gifts under section 2513. Taxpayer 1 and Taxpayer 2, however,

inadvertantly failed to realize that they were required to execute a written election out of the automatic allocation of GST exemption under section 2632(c)(5)(A)(i)(II) for year 6 through Year 9.

Taxpayer 1 and Taxpayer 2 request that they each be granted an extension of time under section 301.9100 to make the election out of the automatic allocation of GST exemption pursuant to section 2632(c)(5)(A)(i)(II) for the transfers to Trust in Year 6 through Year 9.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under section 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1), provides, in part, that the inclusion ratio with respect to any property transferred in a generation-skipping transfer is defined as the excess of 1 over the “applicable fraction.” The applicable fraction, as defined in section 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip), reduced by the sum of certain federal estate tax or state death tax and charitable deductions.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under section 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under section 2631(a), once made, shall be irrevocable.

Section 2632(c) provides that if any individual makes an indirect skip during such individual’s lifetime, any unused portion of such individual’s GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term “indirect skip” means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) provides, in part, that the term “GST trust” means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Under section 2632(c)(5)(A)(i)(I), an individual may elect to have the automatic allocation of GST exemption not apply to an indirect skip under section 2632(c)(1). Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have the automatic allocation not apply to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(i) provides that an election under section 2632(c)(5)(A)(i)(I) will be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or on such later date or dates as may be prescribed by the Secretary.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides that for indirect skips made after December 31, 2000, to which section 2642(f) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred. The automatic allocation pursuant to this paragraph is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates.

Section 26.2632-1(b)(2)(iii)(B) provides, in part, that to elect out of the automatic allocation rules, the transferor must attach a statement (election out statement) to a Form 709 filed within the time period provided in section 26.2632-1(b)(2)(iii)(C). The election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers.

Section 26.2632-1(b)(2)(iii)(C) provides that to elect out of the automatic allocation rules, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing (within the meaning of paragraph (b)(1)(ii) of this section of the Form 709 for the calendar year in which (1) for a transfer subject to section 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) or (2), and election under section 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of section 2642(g)(1), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under section 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2642(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in section 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service.

Section 301.9100-3(c) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election been timely made.

We conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, Taxpayer 1 and Taxpayer 2 are granted an extension of time of 60 days from the date of this letter to make the election out of the automatic allocation of GST under section 2632(c)(5)(A)(i) for the transfers to Trust in Year 6 through Year 9.

The elections should be made on supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 709. Copies are enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy of letter for Section 6110 purposes
Copy of letter